IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 487 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL LAXMANBHAI SHIVRAMBHAI C/O. ANKUR ENTERPRISE - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR KETAN I ACHARYA for Applicant(s) : 1,MRS BK ACHARYA for Applicant(s) : 1,
MR.A.J. DESAI, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
MR.D.R. DAVE for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 04/09/2006

ORAL JUDGMENT

The petitioner-original complainant is before this Court by way of this Criminal Revision Application under section 397 of the Code of Criminal

Procedure, praying that order dated 5th July 2006 passed by the learned Principal Sessions Judge, Mehsana in Criminal Appeal No.10 of 2005 with Criminal Revision Application No.58 of 2005 be quashed and set aside.

The facts of the case are that the petitioner is the original complainant in C.R. No.231 of 1999 registered with Unjha Police Station for the offences punishable under sections 406 and 420 of the Indian Penal Code.

On completion of investigation, the Police submitted charge sheet before the learned Judicial Magistrate, First Class, Unjha. The accused was summoned and a copy of the Police investigation papers were supplied to the accused under section 207 of the Code of Criminal Procedure. The learned Magistrate framed charge vide exh.19 under sections 406 and 420 of the IPC.

The prosecution examined, in all, five witnesses to establish the guilt against the accused and adduced

documentary evidence also to support its case. A further statement of the accused under section 313 of the Code of Criminal Procedure was recorded. The accused examined himself as defence witness no.1 and also adduced evidence to support his say.

2. After fulfledged trial, the learned JMFC, Unjha by judgement and order dated 7th April 2005 convicted the accused-respondent no.2 for offences punishable under sections 406 and 420 of the IPC. The accused was sentenced for the offence under section 406 of IPC awarding two years simple imprisonment and fine of Rs.1000/-, in default further imprisonment for two months for offence under section 420 of IPC, simple imprisonment of two years and fine of Rs.1000/-, in defualt further simple imprisonment for two months is awarded. The learned Magistrate ordered both the sentences to run concurrently.

3. Being aggrieved by and dissatisfied with the order passed by the learned JMFC, Unjha the accused preferred Criminal Appeal No.10 of 2005 under section 374 of Cr.PC., whereas the present petitioner

preferred Criminal Revision Application No.58 of 2005 for enhancement of sentence. The learned Principal Judge, Mehsana having heard both the aforesaid cases together decided the same by a common judgement and order dated 5th July 2006, quashing and setting aside the order passed by the learned JMFC, Unjha acquitting the accused. Against that the present Criminal Revision Application is filed.

4. The learned advocate for the petitioner vehemently submitted that the learned Principal Sessions Judge has committed an error in quashing and setting aside the judgement and order passed by the learned JMFC, Unjha. He submitted that the learned First Appellate Judge has given three grounds for quashing and setting aside the judgement and order of the JMFC. Firstly, that, in the present case the intention of the accused is not proved. The learned Judge has held that for satisfying the ingredients of the offence, the 'intention' is a condition precedent. Secondly, the receipt of goods by the accused is not proved beyond doubt, that being so, the accused cannot be held guilty of the offence

charged with.

Thirdly, the dispute between the parties is that of civil nature, therefore, the accused could not have been convicted. The learned advocate submitted that the learned JMFC discussing the evidence in detail had come to the conclusion that the accused is guilty of the offence and he had accordingly punished him. He submitted that the learned First Appellate Judge had no reason to disturb that finding.

The learned advocate for the petitioner could not point out as to under what provision of law the learned First Appellate Judge could not have disturbed the findings recorded by the learned JMFC.

The learned First Appellate Judge is supposed to appreciate the evidence and on appreciation is duty bound to record his own conclusions. Merely because the findings recorded are not favourable to the petitioner, it cannot be said that the learned First Appellate Judge has erred in recording such findings. The learned First Appellate Judge has discussed all

the aspects of the matter in detail. Not only that he has set out the ingredients which are required to be proved in para 23 by the complainant. Later on, with threadbare analysis of the evidence, the decisions of the Hon'ble the Apex Court, and decisions of other courts has come to the conclusion that the judgement and order passed by the learned JMFC does not stand test of 'legality' and therefore, requires to be quashed and set aside. In the earlier part of the judgement in paras 8, 9 & 10 learned First Appellate Judge has considered the entire evidence of the parties, issues are framed in para 14 and they are answered in para 15. The reasons are recorded in para 16 onwards.

5. This Court finds no error warranting interference at the hands of this Court. The Criminal Revision Application is dismissed.

(RAVI R. TRIPATHI, J.)

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